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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,622	09/17/2003	Joshua T. Chard	32340-DIV	4008

7590 03/26/2008

Hovey Williams LLP
Suite 400
2405 Grand Boulevard
Kansas City, MO 64108

EXAMINER	
CHIN SHUE, ALVIN C	

ART UNIT	PAPER NUMBER
3634	

MAIL DATE	DELIVERY MODE
03/26/2008	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSHUA T. CHARD and EDMAN R. BLAIR

Appeal No. 2007-3140
Application 10/664,622
Technology Center 3600

Decided: March 26, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and JENNIFER D. BAHR, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1, 17, and 22, and 24 (Brief 5). As explained more fully below, the Appellants are deemed to have withdrawn claims 23 and 25-33 from appeal.

We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented an "isolation mechanisms for electrically isolating control input mechanisms of boomed apparatuses." (Specification 1).

Claim 1 under appeal reads as follows:

> 1. An isolation mechanism for a boomed apparatus, wherein the boomed apparatus includes a movable boom and a control assembly comprising substantially electrically conductive control valves located at a general distal end of the boom, the isolation mechanism comprising:
>
> a substantially electrically non-conductive control handle actuatable by a worker to provide a control input; and
>
> a linkage configured for positioning proximate to the distal end of the boom and substantially external to the boom, the linkage operable to couple the control handle with the control assembly so as to communicate the control input therebetween, the linkage further including an elongated rod assembly that is substantially electrically non-conductive, such that when positioned external to the boom, the linkage provides a dielectric gap between the control handle and the movable boom to substantially electrically isolate the control handle from the control assembly and the movable boom to thereby prevent bodily injury to the worker.

Claim 22 under appeal reads as follows;

> 22. An isolation mechanism configured for coupling with a boomed apparatus comprising a movable boom and a control assembly, the isolation mechanism comprising:
>
> means for providing control input to the boom when the isolation mechanism is coupled with the boom; and

means for producing a dielectric gap between the means for providing control input to the boom and the movable boom when the isolation mechanism is coupled with the boom.

REJECTIONS

The Examiner rejected claim 22 under 35 U.S.C. § 102(b) as being anticipated by either Prescott, Balogh or Gilmore.

The Examiner rejected claims 1, 17, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Gilmore or Prescott in view of Bauer or Luscombe.

The Examiner rejected claims 17 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Bauer.

The Appellants chose not to contest the final rejection of claims 23, 25, 26, and 28-31 under §112, 1st para.; claim 26 under §112, 2nd para.; and claims 23 and 25-33 under §103(a) over Appellants' admitted prior art or Holmes in view of Prescott and Luscombe or Bauer.

According to 37 C.F.R. § 41.31(c) (2007), "[a]n appeal, when taken, must be taken from the rejection of all claims under rejection which the applicant or owner proposes to contest." Because the Appellants have decided not to appeal the rejections of claims 23 and 25-32, the Appellants are deemed to have withdrawn claims 23 and 25-32 from appeal. As the Appellants have decided not to appeal the rejection of claim 33 under § 103(a) over Holmes in view of Prescott and Luscombe or Bauer, Appellants are deemed to have withdrawn claim 33 from appeal as well.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Prescott	US 3,489,243	Jan. 13, 1970
Bauer	US 3,842,458	Oct. 22, 1974
Balogh	US 3,844,378	Oct. 29, 1974
Gilmore	US 3,985,041	Oct. 12, 1976

Appellants contend that Prescott, Balogh and Gilmore do not disclose a linkage that provides a dielectric gap between the control handle from the movable boom or a linkage which extends beyond the periphery of the boom.

ISSUES

Whether the Appellants have shown that the Examiner erred in finding that Prescott, Balogh and Gilmore disclose a linkage that provides a dielectric gap between the control handle and the movable boom and a linkage that extends beyond the periphery of the boom.

FINDINGS OF FACT

The Appellants invented an isolation mechanism for a boomed apparatus which includes a linkage 50 that provides a dielectric gap between a control handle 48 and a movable boom 16 (Figure 2). To provide this dielectric gap the Appellants cover the linkage 50 and the control handle 48 with electrically non-conductive material (Specification 8). The linkage 50 extends beyond the periphery of the boom (Figure 2).

Prescott discloses a boomed apparatus which includes linkages 36, 38 covered by electrically non-conductive material (col. 2, ll. 3 to 4). These linkages provide a dielectric gap between the handles 72 and the control assembly (col. 1, ll. 14 to 20). Prescott does not disclose that the linkages 36, 38 provide a dielectric gap between the handles 72 and the boom. Linkages 36, 38 do not extend beyond a periphery of the boom.

Balogh discloses a boomed apparatus which includes linkages 68 which are optical fibers joined in a cable 66 which transmit optical energy from a lamp assembly 56 to a receiver 70 (col. 4, ll. 54 to 58; Figure 1). Linkages 68 are not disposed between the handle 42 and the boom 24, 26. Balogh does not disclose that the linkages 68 provide a dielectric gap between the handle 42 and the boom 24, 26. The linkages 68 do not extend beyond the periphery of the boom.

Gilmore discloses a boomed apparatus including control handles 23 connected by cables or linkages 24 covered by electrically non-conductive material to the controller 21 (col. 3, ll. 10 to 16). In addition, a section of the boom 5 is covered with non-conductive material 5a (col. 2, ll. 24 to 26). The handles 23 are connected to the cables or linkages 24 by a metallic push pull cable 50 which is attached to the section of the boom 5 which is not covered with electrically non-conductive material 5a. Gilmore does not disclose that the linkages 24 provide a dielectric gap between the handles 23 and the boom 5. The linkages 24 do not extend beyond the periphery of the boom.

ANALYSIS

Anticipation of claim 22

Claim 22 recites a linkage or means for producing a dielectric gap between the control means and the boom. The Examiner states that the means for providing a dielectric gap is disclosed in Appellants' disclosure at pages 4 and 5. The Examiner directs our attention to the disclosure on these pages and argues that the means is an electrically non-conductive material interposed between the handle and the control assembly. The Examiner goes on to state that each of Prescott, Balogh and Gilmore discloses a non-conductive material interposed between the handle and the control assembly and thus each of these references provides the recited dielectric gap.

A review of pages 4 and 5 of Appellants' disclosure reveals that Appellants discuss an electrically conductive material between the handle and the control assembly *or* between the handle and the electrically conductive structural material which forms the boom itself. It is the provision of electrically non-conductive material interposed between the handles and the boom itself that provides the dielectric gap recited by claims 1 and 22.

Prescott

The Examiner is of the opinion that linkages 36, 38 of Prescott provide the recited dielectric gap.

The linkages 36, 38 of Prescott do not provide a dielectric gap between the handles 72 and the boom 16. The linkages 36, 38 are comprised of non-conducting material and are interposed between the control assembly 24 and the handles 72. However the handles 72 are connected to and are

disposed within the boom 16 (Figure 3). Therefore the linkages 36, 38 do not provide a dielectric gap between the handles 72 and boom 16. As Prescott does not disclose that the handles 72 and the various other elements connected to the boom 16 are comprised of electrically non-conducting material, no dielectric gap between the handles 72 and the boom itself is provided.

As such, we will not sustain the Examiner's rejection of claim 22 under 35 U.S. § 102(b) as anticipated by Prescott.

Balogh

The Examiner is of the opinion that the Balogh fibers 68 within bundle 69 provide a dielectric gap between the handle 42 and the boom 26. Handle 42 is connected to a controller 40 which controls the intensity of the light of bulbs 66 inside lamp assembly 56 by the use of variable resistors in an electric circuit (col. 3, l 45 to col. 4, l 23). The controller 40 is connected to the boom (Figure 1). Light radiating from each of the bulbs 66 is conducted by an optic fiber 68 within boom 24, 26 down the boom to a receiver 70 (col. 5, ll. 10 to 13; Figure 1). These fibers 68 do not provide a dielectric gap between the handle 42 and the boom.

As such, we will not sustain the Examiner's rejection of claim 22 under 35 U.S.C. § as being anticipated by Balogh.

Gilmore

The Examiner finds that the cables 24 are means for providing a dielectric gap between the control input or handles 23 and the boom 5. Although the cables 24 are non-conductive, these cables are within the boom itself and do not provide a dielectric gap between the handles 23 and the

boom 5. In fact, as push-pull cables 50 are comprised of a metallic material and are in contact with the section of the boom that is not covered with non-conducting material, such a dielectric gap does not exist in the Gilmore apparatus.

As such, we will not sustain the Examiner's rejection of claim 22 under 35 U.S.C. § 102(b) as being anticipated by Gilmore.

Obviousness

In the Examiner's rejections of claims 1, 17, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Gilmore or Prescott in view of Bauer or Luscombe. Bauer and Luscombe are relied on for teaching a non-conductive handle.

Claim 1 recites that a linkage provides a dielectric gap between the control handle and the boom. We have found that neither Gilmore nor Prescott discloses a linkage that provides a dielectric gap between the control handle and the boom. Bauer and Luscombe do not cure this deficiency. Therefore, we will not sustain the rejections of claim 1 under 35 U.S.C. § 103 as being unpatentable over Gilmore or Prescott in view of Bauer or Luscombe.

Claim 17 requires that the linkage extend beyond the periphery of the boom. Neither Prescott nor Gilmore discloses a linkage that extends beyond the periphery of the boom. Bauer and Luscombe do not cure this deficiency. Therefore, we will not sustain the Examiner's rejections of claim 17 or claim 24 dependent thereon under 35 U.S.C. § 103 as being unpatentable over Gilmore or Prescott in view of Bauer or Luscombe.

In the Examiner's rejection of claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Bauer or Luscombe, Bauer and Luscombe are relied on for teaching a non-conductive handle. We have found that Balogh does not disclose a linkage that extends beyond the periphery of the boom and that neither Bauer nor Luscombe cure this deficiency. Therefore, we will not sustain the rejections of claim 17 or claim 24 dependent thereon under 35 U.S.C. § 103 as being unpatentable over Balogh in view of Bauer or Luscombe.

The withdrawal of the appeal as to claims 23 and 25 to 33 operates as authorization to cancel these claims from the application. MPEP § 1215.03.

The decision of the Examiner is reversed.

REVERSED

vsh

HOVEY WILLIAMS LLP
SUITE 400
2405 GRAND BOULEVARD
KANSAS CITY MO 64108